

Economic substance requirements

Following an in-depth review by the EU's Code of Conduct Group on Business Taxation, economic substance legislation was introduced by the Crown Dependencies and Overseas Territories on 1 January 2019, with supporting guidance notes following during Q2. The legislation has prompted resident companies in relevant jurisdictions to examine their day-to-day activities and governance, ensuring compliance with new regulations and further enhancing well-ingrained best practices.

But are all resident companies and entities affected by the requirements? What do those companies in scope of the legislation actually have to do? And what are the key regulatory differences between jurisdictions? We have picked apart the legislation and guidance notes to clarify the requirements and discuss the impact on those affected.

Read on for an overview of the requirements and delve into the finer details by downloading our comprehensive Q&A document at the end of the article.

High level requirements, in-depth detail

While the legislation is wide-ranging and demands proper scrutiny, the requirements can be divided into three high level areas:

1. A resident company must be directed and managed in its relevant jurisdiction;
2. The company must have qualified people, premises and expenditure in that jurisdiction;
3. Core income generating activities (CIGA) of the company must be conducted in that jurisdiction.

As with any legislation, the devil is in the detail. The requirements only apply to tax resident companies that carry out one or more specific relevant activities, a full list of which can be found in our full Q&A document. Resident companies vary by their entity vehicle type, and this must also be considered depending on the jurisdiction in which the entity is tax resident.

Alongside the new legislation, considerable changes to the tax return are being

made. These changes will ensure that detailed information can be provided to the tax authorities to demonstrate that in-scope entities are meeting the requirements.

What about outsourcing?

Administrators in the Crown Dependencies and Overseas Territories can sleep safe; the legislation permits outsourcing of CIGA, providing the resident company can demonstrate adequate supervision of any outsourced requirements.

Enhancing working practices

Compliance with the legislation will involve enhancements of existing working practices rather than a complete overhaul. For instance, adapting the existing minute logs to become 'Substance Registers' can help to record all key data necessary for preparing the resident company's tax return. However, as with all board matters, attention to detail is a must – directors should be ever-vigilant of CIGA decisions being added to topics originally considered as non-CIGA matters, for example.

At a high level, directors can benefit from clearly stating and separating CIGA decisions and non-CIGA decisions, as below:

CIGA decisions	Non-CIGA decisions
Final investment decisions; Refinance decisions and loan monitoring; Risk management decisions; Approval of investor reports; Regulatory return approvals; Tax return approval.	Non-binding offers; Due diligence approvals; Investment / information only updates; Portfolio company actions; Ancillary decisions.

Supporting our clients

It won't come as a surprise that we've been working hard since the legislation was announced.

Behind the scenes, our dedicated client teams have spent significant time

understanding which clients will be in scope of the requirements. We have a Working Group scoping out any required enhancements to our operations and systems, and any updates to our policies and procedures. For those affected, we will be working alongside advisors to identify and implement any actions that might be required to ensure continued compliance.

A changing regulatory landscape

While guidance has been provided by governments of the Crown Dependencies and Overseas Territories, it will undoubtedly change over time. We will remain tuned into the subject and prepared for any changes to the requirements as they continue to evolve.

Download our comprehensive Q&A document on economic substance requirements [here](#).

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